

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

RANDALL MEIER,

Plaintiff and Appellant,

v.

COUNTY OF RIVERSIDE et al.,

Defendants and Respondents.

E048082

(Super.Ct.No. RIC357725)

OPINION

APPEAL from the Superior Court of Riverside County. William E. Burby, Jr.,
(Retired judge of the Los Angeles Super. Ct. assigned by the Chief Justice pursuant to art.
VI, § 6 of the Cal. Const.) Affirmed.

Randall Meier, in pro. per., for Plaintiff and Appellant.

Kinkle, Rodiger and Spriggs and Bruce E. Disenhouse for Defendants and
Respondents.

Randall Meier, plaintiff and appellant (hereafter plaintiff), appeals from the
judgment entered against him after the trial court granted the motion for nonsuit made by

defendants and respondents, County of Riverside, Steve Welch, Deputy C. Cobb, Corporal Joe Young, and Lt. Mark P. DeRosia (hereafter defendants). Defendants made their nonsuit motion following plaintiff's opening statement in a jury trial on his seventh amended complaint seeking damages for false imprisonment based on plaintiff's alleged wrongful arrest on an attempted kidnapping charge. In their nonsuit motion, defendants asserted that plaintiff could not relitigate the issue of probable cause because that issue had actually been litigated and resolved against him when he was held to answer on the attempted kidnapping charge following his preliminary hearing in the criminal case. Because plaintiff was collaterally estopped from challenging the lawfulness of his arrest, defendants asserted that plaintiff could not establish his claim for false imprisonment based on wrongful arrest. The trial court agreed and granted defendants' nonsuit motion.

Plaintiff, who represented himself in the trial court as he does in this appeal, raises numerous issues regarding not only the various errors the trial court purportedly committed but also the numerous ways he believes he was mistreated, or at least disregarded, by the trial court. The majority of plaintiff's claims involve issues that are not reviewable on appeal and stem from his understandable lack of knowledge about the law in general, and the different principles that apply in criminal and civil proceedings, in particular. For example, plaintiff argues the trial court committed error when it failed to rule on the constitutional validity of the victim's infield identification of plaintiff and instead ruled that the issue was one for the jury to decide. Plaintiff is correct that in a criminal prosecution an unduly suggestive pretrial identification may violate a criminal

defendant's state and federal right to a fair trial as guaranteed by the due process clauses of both constitutions and thus may be excluded from evidence. (See, e.g., *People v. Avila* (2009) 46 Cal.4th 680, 698.) However, that principle does not apply to this lawsuit, which is a civil action seeking damages for false imprisonment based on an alleged wrongful arrest of plaintiff by various police officers. In order to prevail on his false imprisonment claim in this civil action, whether the victim's identification of plaintiff was unduly suggestive or coerced, as plaintiff alleged, is a question the jury would decide in order to determine whether plaintiff's arrest was unlawful which in turn would render his confinement wrongful.

The dispositive issue in this appeal is whether the trial court properly granted defendants' nonsuit motion. We conclude, as we explain below, that it did. Plaintiff's remaining issues are irrelevant. Therefore we will affirm.

FACTS¹

On March 9, 2000, plaintiff was driving in Norco when he saw a young girl run across a street. Because he thought she might be in trouble or need help, plaintiff pulled

¹ Plaintiff filed a motion on May 3, 2010, to augment the record on appeal. That motion is granted with respect to (1) the transcript of plaintiff's April 30, 2001, preliminary hearing in *People of the State of California v. Randall Edward Meier*, case No. RIF 090624, and (2) plaintiff's Seventh Amended Complaint for Damages, filed June 6, 2003. We take our statement of facts from those two filings, both of which are appended to plaintiff's motion to augment and are hereby deemed part of the record on appeal. Plaintiff's motion to augment is denied in all other respects because the police reports which he seeks to include in the record on appeal were not pertinent to any issues the trial court addressed before the trial court granted defendants' nonsuit motion.

alongside the victim and asked if she needed help. When the victim turned down the offer, plaintiff made a U-turn and drove away.

According to the victim, who was 14 years old at the time, plaintiff asked if she wanted a ride and when she declined, he grabbed her arm and attempted to pull her into his car. After she pulled away and the car drove off, the victim wrote the vehicle license plate number on her arm. When she got home, the victim told her mother what had happened. The victim's mother called 911 to report the incident to the county sheriff's department. The victim gave the license plate number to the 911 operator and also described the driver of the vehicle to the responding deputy sheriff.

Based on the license plate number, plaintiff was identified as the owner of the vehicle. Investigator Steve Welch contacted plaintiff by telephone. Ultimately, plaintiff was detained in the parking lot at Arlington High School.² Another deputy brought the victim to the parking lot. After the victim identified defendant and his car, Investigator Welch arrested him on a charge of attempted kidnapping. After his release on bail, plaintiff filed this lawsuit against various defendants, including Investigator Welch and the County of Riverside. On April 30, 2001, plaintiff was held to answer on the attempted kidnapping charge following his preliminary hearing. Later, and for reasons not entirely clear from the record, the charge was dismissed.³

² Plaintiff was at the high school to pick up one of his daughters.

³ Plaintiff alleges in his complaint that the charge was dismissed at his preliminary hearing due to lack of evidence. Defendant was held to answer at his preliminary hearing
[footnote continued on next page]

After the trial court overruled their demurrer to plaintiff's seventh amended complaint, which alleged causes of action based on false imprisonment and defamation, defendants filed their answer and then later filed a motion for summary judgment on both causes of action. The trial court granted summary adjudication on plaintiff's defamation claim, but denied the motion with respect to the false imprisonment cause of action. As a result, the matter proceeded to jury trial on the false imprisonment claim.

In their trial brief, defendants raised the issue of collateral estoppel. Specifically, defendants cited this court's decision in *McCutchen v. City of Montclair* (1999) 73 Cal.App.4th 1138 (*McCutchen*) (Fourth Dist., Div. Two) to support their argument that the trial court's probable cause finding at plaintiff's preliminary hearing in the criminal case precluded plaintiff from relitigating that issue at trial in his civil case. On the second day of trial, after the parties selected a jury but before the presentation of opening statements, the trial court considered the collateral estoppel issue. The trial court found that in order to prevail, plaintiff would have to present evidence to show that one of the exceptions to collateral estoppel that we identified in *McCutchen* applied in this case. After plaintiff's opening statement, defendants moved for nonsuit on the ground that plaintiff's false imprisonment cause of action was barred by the probable cause finding made at his preliminary hearing. The trial court granted that motion. Plaintiff appeals from the subsequently entered judgment.

[footnote continued from previous page]

so that allegation is incorrect. The parties do not dispute that the criminal charge against plaintiff was dismissed. Therefore, we will not further address the matter.

DISCUSSION

““The standard of review for a nonsuit after [the] conclusion of the opening statement is well settled. Both the trial court in its initial decision and the appellate court on review of that decision must accept all facts asserted in the opening statement as true and must indulge every legitimate inference which may be drawn from those facts. [Citations.] A nonsuit at this early stage of the proceedings is disfavored. [Citation.] It can only be upheld on appeal if, after accepting all the asserted facts as true and indulging every legitimate inference in favor of plaintiff, it can be said those facts and inferences lead inexorably to the conclusion plaintiff cannot establish an essential element of its cause of action or has inadvertently established uncontrovertible proof of an affirmative defense. [Citations.]’ [Citation.]” (*Galanek v. Wismar* (1999) 68 Cal.App.4th 1417, 1424.)

To prevail on his false imprisonment cause of action plaintiff had to prove he was held against his will, the confinement was not lawful, and that it lasted for an appreciable period of time. (*Easton v. Sutter Coast Hospital* (2000) 80 Cal.App.4th 485, 496 [“The elements of a tortious claim of false imprisonment are: (1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief.”].) Whether his confinement was “without lawful privilege” depends on whether plaintiff’s arrest was lawful. “An arrest is valid if supported by probable cause.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1037.) To show that his arrest was unlawful and thus that his confinement was without lawful privilege, plaintiff had to

prove that his arrest was not based on probable cause. “Probable cause to arrest exists if facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that an individual is guilty of a crime.” (*Ibid.*)

In *McCutchen* we held that “a prior judicial determination at a preliminary hearing that there was sufficient evidence to hold the plaintiff over for trial may, in some situations, preclude the plaintiff from relitigating the issue of probable cause to arrest in a subsequent civil suit. [Citation.]” (*McCutchen, supra*, 73 Cal.App.4th at p. 1147, citing *Haupt v. Dillard* (9th Cir. 1994) 17 F.3d 285, 290.) We also identified three situations in which the probable cause finding at a preliminary hearing does not have collateral estoppel effect and therefore does not preclude relitigation of the issue in a civil case: (1) when for tactical reasons the plaintiff in the civil action did not fully and fairly litigate the issue of probable cause at the preliminary hearing, (2) when the plaintiff alleges that the arresting officer lied or presented fabricated evidence at the preliminary hearing, and (3) the evidence presented at the preliminary hearing was not the same evidence the arresting officer relied on to arrest the plaintiff such that the determination of probable cause for purposes of holding the plaintiff to answer at the preliminary hearing is based on different evidence than the arresting officer relied on to find probable cause to arrest. (*McCutchen*, at pp. 1147-1148.)

Plaintiff alleged in his seventh amended complaint and argued in the trial court that the arresting deputy sheriffs coerced the alleged victim to identify him as the person who attempted to kidnap her while she was walking home from school. Plaintiff also

argued that for tactical reasons the probable cause issue was not fully litigated during his preliminary hearing. After reviewing the transcript of plaintiff's preliminary hearing, the trial court found otherwise and granted defendants' nonsuit motion. According to the trial court, plaintiff's attorney in the criminal case addressed probable cause when he "extensively cross-examined the victim on her credibility."

The relevant inquiry for purposes of collateral estoppel is whether the party had a full and fair opportunity at the preliminary hearing to litigate the issue of probable cause to arrest. (*McCutchen, supra*, 73 Cal.App.4th at p. 1147.) "[U]nless the plaintiff in a civil suit can demonstrate that the issue of probable cause was not litigated at the preliminary hearing for tactical reasons, we will presume that the plaintiff had a full and fair opportunity to litigate the issue of probable cause to arrest." (*Ibid.*)

Plaintiff did not make the required showing in the trial court. Although he argued that the issue of probable cause was not litigated at the preliminary hearing for tactical reasons, he did not support that argument with evidence. Plaintiff told the trial court that he would need a continuance in order to subpoena his criminal defense attorney to appear at trial and address the probable cause issue. Plaintiff then made his opening statement, in which he stated, in pertinent part, that the evidence would show he was arrested without probable cause because the victim lied and the deputy sheriffs coerced the victim to wrongly identify him. According to plaintiff, the evidence would show that the victim ran in front of plaintiff's car and diagonally across the street causing traffic to stop. Plaintiff thought the victim might need help so he pulled up beside her in his car. When

the victim declined his offer of help, plaintiff turned around and drove away. Plaintiff also argued that the victim could not identify him as the driver of the car until a deputy sheriff drove her “around the parking lot” and “[t]ook some more time with her.”

Plaintiff did not cite facts in his opening statement that would demonstrate the existence of any of the three collateral estoppel exceptions previously noted. As a result, plaintiff did not show that he is not collaterally estopped from relitigating the issue of probable cause. The preliminary hearing transcript shows that plaintiff’s attorney in the criminal case cross-examined the victim about the circumstances of the alleged attempted kidnapping in order to show that she was not telling the truth. Although his criminal defense attorney did not ask the victim any questions about the circumstances under which she identified plaintiff as the person who had attempted to kidnap her, plaintiff did not cite any evidence in his opening statement that would establish a tactical reason for not addressing that issue at the preliminary hearing. Therefore, we must conclude plaintiff did not meet his burden under *McCutchen* to demonstrate the exception to collateral estoppel based on a tactical decision not to address probable cause. Consequently, we must further conclude plaintiff had the opportunity to fully and fairly litigate the probable cause issue at his preliminary hearing, and therefore he is collaterally estopped from relitigating that issue in his civil case. (*McCutchen, supra*, 73 Cal.App.4th at p. 1147.)

Because we conclude the trial court correctly granted defendants’ motion for nonsuit, we will not address plaintiff’s other claims of error, all of which pertain to

matters that might have affected the outcome of a trial in this case. For example, plaintiff contends that defendants' attorney engaged in misconduct by falsely advising the trial court that he had served an expert witness demand on plaintiff and also had filed the demand with the court. Although it appears plaintiff's interpretation of the pertinent events is incorrect, the issue is irrelevant in any event. The expert witness demand affects the ability to present expert testimony at trial. (See Code Civ. Proc., § 2034.300.) As a result of our conclusion that the trial court properly granted defendants' nonsuit, there will not be a trial in this case. Therefore, the expert witness issue, and any other issue, is irrelevant.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ McKinster
Acting P.J.

We concur:

/s/ Richli
J.

/s/ Miller
J.